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June 17, 2013

BY HAND DELIVERY

Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6733

Dear Mr. Herman:

This office represents Every Republican is Crucial (ERICPAC), Treasurer Melinda Fowler Allen, and Congressman Eric Cantor. We are responding to letters from Mr. Jeff S. Jordan dated May 8, 2013, notifying our clients of a complaint ("Complaint") which has been designated Matter Under Review ("MUR") 6733 by the Federal Election Commission ("FEC" or "Commission").¹ Mr. Jordan's letters state that the "complaint indicates" that ERICPAC, its Treasurer, and Congressman Cantor "may have violated the Federal Election Campaign Act of 1971" ("the Act"). As explained in greater detail below, we respectfully request that the Commission dismiss our clients because they have been erroneously included as respondents to this MUR and MUR 6563, and find no reason to believe that our clients violated the Act.

The Complaint in this matter describes the same underlying events and legal allegations as the complaint in MUR 6563 and Mr. Jordan's notification letters repeat that the Complaint "indicates" that our clients "may have violated" the Act. Once again, (1) the Complaint does not identify ERICPAC, its Treasurer, or Congressman Cantor as a respondent, (2) the Complaint does not contain a single allegation of a statutory or regulatory violation by them, and (3) Mr. Jordan's notification letters fail to otherwise explain what in the Complaint "indicates" that our clients may have violated the Act.

The FEC's now repeated practice of naming persons as respondents to a complaint that does not allege violations by them is contrary to the notice requirements of the Act. Therefore, we respectfully request that the Commission dismiss our clients as respondents to this MUR and renew the similar request we made in our June 12,

¹ On May 21, 2013, the FEC granted our request for an extension of time to respond to the Complaint until June 17.

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2012, response and June 11, 2013, supplemental response to the complaint in MUR 6563. Moreover, the alleged facts do not demonstrate a violation by our clients and the Commission should find no reason to believe that they violated the Act.

THE COMPLAINT

Like the complaint in MUR 6563, the Complaint in this MUR alleges that Congressman Aaron Schock impermissibly solicited from Congressman Cantor and ERICPAC a \$25,000 contribution to the Campaign For Primary Accountability ("CPA"), an independent expenditure-only political committee. The Complaint further alleges that Congressman Rodney Davis, who was then chief of staff to Congressman John Shimkus, served as the "contact person" for the \$25,000 contribution ERICPAC made to CPA. The Complaint bases these allegations on a report issued by the Office of Congressional Ethics ("OCE Report").

The Complaint begins by stating: "Based on information in [the OCE Report], Rep. Schock and Rep. Davis solicited contributions for Campaign for Primary Accountability ("CAP"), [sic] an independent expenditure-only committee registered with the Commission, in amounts greater than the limits established under the Act, which was in violation of the Act."

The Complaint asserts: "Under the Act, no candidate, federal office holder or agent of a candidate or federal office holder may solicit or direct funds in connections [sic] with elections for Federal office, including Federal election activity, unless the funds are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A)." Therefore, according to the Complaint, "Federal candidates and officeholder [sic] and their agents may only solicit up to \$5,000 a year from individuals for independent expenditure-only committees."

The Complaint concludes that "both Rep. Schock and Rep. Davis violated the Act. Rep. Schock solicited contributions ... in excess of \$5,000 [and Rep. Davis] violated the Act by participating in the solicitation, direction and receipt of contributions in excess of \$5,000." The Complaint contains no factual or legal allegations of misconduct by ERICPAC, its Treasurer, or Congressman Cantor. Rather, the Complaint simply states that Congressman Cantor received a solicitation on behalf of CPA and "ERICPAC, Rep. Cantor's Leadership PAC, then contributed \$25,000" to CPA. The Complaint does not allege that these actions violate the Act.

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The OCE Report that serves as the factual and legal basis for the Complaint also contains no allegations of misconduct by ERICPAC, its Treasurer, or Congressman Cantor. The OCE Report explains that Congressman Schock called Congressman Cantor to solicit \$25,000 to an independent expenditure-only political committee supporting the campaign of Congressman Adam Kinzinger. OCE Report ¶¶ 36-38, Ex. 8 ¶¶ 7-8, Ex. 9 ¶¶ 21-26. Congressman Cantor verbally agreed and suggested that Congressman Schock contact Rob Collins who might be able to assist Congressman Schock with his fundraising for CPA. OCE Report ¶¶ 39, 40-41, Ex. 8 ¶¶ 9-10.

Congressman Schock subsequently asked his Chief of Staff to contact Rob Collins for fundraising assistance. OCE Report Ex. 12 ¶ 35. When Congressman Schock's Chief of Staff contacted Rob Collins, he allegedly replied: "ok let me see what I can do." OCE Report Ex. 12 ¶ 37. Rob Collins emailed Ray Allen, a consultant to ERICPAC, requesting that ERICPAC make a \$25,000 contribution to CPA. OCE Report ¶ 42, Ex. 24.² On the same day, Ray Allen called Congressman Cantor to confirm whether ERICPAC should make a \$25,000 contribution to CPA. OCE Report ¶ 43, Ex. 8 ¶ 11. Congressman Cantor authorized the contribution after asking whether the contribution would be legal and Ray Allen answered yes. OCE Report ¶ 43, Ex. 8 ¶ 11. ERICPAC then contributed \$25,000 to CPA. OCE Report ¶ 44. All ERICPAC funds comply with the amount, source, and reporting requirements of the Act. See 2 U.S.C. §§ 434, 441a; Advisory Opinion 2011-21.

There is no suggestion in the Complaint, the OCE Report, or elsewhere that Congressman Cantor impermissibly solicited contributions on behalf of CPA or that ERICPAC's contribution to CPA violated the Act.

DISCUSSION

For all the reasons stated in our enclosed June 12, 2012, response and June 11, 2013, supplemental response in MUR 6563 which we adopt and incorporate here by reference, ERICPAC, its Treasurer, and Congressman Cantor should be dismissed as respondents to this MUR.

² The OCE Report indicates that Rob Collins also solicited a contribution to CPA from a lobbyist of the American College of Radiology which made a \$5,000 contribution from its PAC and requested that the contribution be credited to Congressman Schock. OCE Report ¶¶ 87-88, Ex. 21 ¶¶ 14-16, Ex. 21, Ex. 22.

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To summarize: all applicable statutory and regulatory authority require that ERICPAC, its Treasurer, and Congressman Cantor be dismissed as respondents to this MUR because the Complaint (1) does not identify them as respondents, (2) does not allege a violation by them or contain any facts that constitute a violation and, therefore, (3) does not provide them an adequate opportunity to respond to the Complaint.

Congressmen Aaron Schock and Rodney Davis – not ERICPAC, its Treasurer, or Congressman Cantor – are the respondents named in the Complaint. The Complaint's title lists "Aaron Schock" and "Rodney Davis" as the parties against whom the Complaint was filed and the Complaint begins and ends by alleging that Congressmen Schock and Davis improperly solicited contributions in violation of the Act.

Furthermore, the OCE Report which serves as the factual and legal basis for the Complaint contains no allegations of wrongdoing by ERICPAC, its Treasurer, or Congressman Cantor. This omission is particularly relevant because the OCE Report examined compliance with the same provisions of the Act, namely 2 U.S.C. § 441i(e)(1), that are the subject of the Complaint. *See, e.g.*, OCE Report ¶¶ 10, 19-25, 104. The OCE Report incorporates testimony and documents from ten different sources, but includes no allegations of violations by ERICPAC, its Treasurer, or Congressman Cantor.

Finally, the FEC's May 8, 2013, notification letters do not otherwise explain how the Complaint "indicates" that our clients "may have violated" the Act.

Respondents to a MUR have a statutory right to demonstrate that the Commission should take no action on a complaint. 2 U.S.C. § 437g(a)(1). As explained in our June 12, 2012, response in MUR 6563, that right contemplates a fair opportunity to respond to a clearly described alleged violation. However, nothing in the Complaint, the OCE Report, or the FEC's May 8, 2013, letters provide any such description or explanation. These deficiencies deprive our clients of their right to meaningfully respond to the Complaint. Therefore, the Commission should dismiss ERICPAC, its Treasurer, and Congressman Cantor as respondents to this MUR.

Furthermore, and as detailed in our June 12, 2012, response and June 11, 2013, supplemental response, the activities of our clients that are described in the Complaint and the OCE Report – that Congressman Cantor was solicited and ERICPAC made a \$25,000 contribution to CPA – are entirely lawful under the Act

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as interpreted by Commission precedent. The Complaint alleges that Congressmen Schock and Davis solicited funds to CPA in violation of 2 U.S.C. § 441i(e)(1). In contrast, Congressman Cantor did not solicit any money for CPA and 2 U.S.C. § 441i(e)(1) does not apply to contributions by ERICPAC which consists entirely of funds that are subject to the amount, source, and reporting requirement of the Act.

2 U.S.C. § 441i(e)(1) states that "an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of" a candidate for or an individual holding federal office may not "solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act" (emphasis added).

All ERICPAC funds comply with the limitations and prohibitions of the Act. *See* 2 U.S.C. § 441a; Advisory Opinion 2011-21. Also, ERICPAC donated to an independent expenditure-only committee within the limitations of the Act. *See SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Opinions 2010-9, 2010-11 (donation amounts to independent expenditure-only committees are not limited by the Act). Finally, all ERICPAC funds were reported as required by the Act. *See* 2 U.S.C. § 434.

Furthermore, the Commission confirmed in Advisory Opinion 2007-29 that a Congressman "may donate an unlimited amount of funds from his principal campaign committee" and is "not restricted by 2 U.S.C. § 441i(e)(1)" because "the funds comply with the amount and source limits of the Act." Like a Congressman's principal campaign committee, a Congressman's leadership PAC consists of funds that comply with the amount, source, and reporting requirements of the Act. *See* 2 U.S.C. § 441a; Advisory Opinion 2011-21. Therefore, Advisory Opinion 2007-29 confirms that ERICPAC's \$25,000 contribution to CPA was made in full compliance with 2 U.S.C. § 441i(e)(1).

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CONCLUSION

The FEC has again included our clients in a proceeding in which there is no allegation of wrongdoing by them. Therefore, ERICPAC, its Treasurer, and Congressman Cantor should be dismissed from this MUR. Furthermore, our clients' activities were entirely lawful and the Commission should find no reason to believe that ERICPAC, its Treasurer, and Congressman Cantor violated the Act.

Sincerely,


Jan Witold Baran

Caleb P. Burns

Enclosures

1-800-444-0445